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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

CHARLES ABERNATHY,

Plaintiff and Appellant,

v.

CITYWIDE COUNCIL SENIOR
DISABLED,

Defendant and Respondent.

A154710

(San Francisco County
Super. Ct. No. CGC16555892)

Representing himself, Charles Abernathy filed a complaint against Citywide Council Senior Disabled (CCSD) for fraud. The trial court sustained CCSD's demurrer without leave to amend, and Abernathy now appeals, again representing himself. He argues that he was not informed of the demurrer, but the record shows that he was present at the demurrer hearing. Because Abernathy fails to show error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Abernathy did not designate his complaint against CCSD as part of the record on appeal, so we draw our summary of his allegations from the parties' briefs. In March 2015, Abernathy was elected treasurer of the Tenant Association (Association) at the John F. Kennedy building on Sacramento Street in San Francisco. He claims that CCSD, a nonprofit organization that represents senior and disabled public housing tenants in San Francisco, took control of the Association's bank account by fraud, and ignored requests

from Abernathy to return the account and provide documentation about the account, as well as requests to issue checks on the account.¹

CCSD demurred, arguing among other things that Abernathy lacked standing to bring the claim because the funds at issue belong to the Association, not Abernathy, and the Association is therefore the proper plaintiff. CCSD further argued that to the extent Abernathy sought to bring his claim on behalf of the Association, he failed to comply with the requirements of a derivative lawsuit.

With the demurrer, CCSD submitted a declaration from its counsel, Peter Hadiaris, describing his efforts to meet and confer with Abernathy. He first attempted to reach Abernathy by telephone, but was unable to do so because the telephone number shown on Abernathy's pleadings had been disconnected. Hadiaris then wrote to Abernathy "describing some of the defects in the complaint, and recommending that Mr. Abernathy call the BASF Lawyer Referral Service." Abernathy responded with a letter that he would look for a lawyer and would extend the time to plead. More than two months later, having heard nothing further from Abernathy, Hadiaris left Abernathy a phone message. Hadiaris did not hear back, and then filed the demurrer. The register of actions reflects that at the hearing on the demurrer, held on May 19, 2017, the trial court sustained the demurrer without leave to amend on the grounds that "plaintiff lacks standing and fails to state a cause of action." CCSD was to submit an order for the court's signature.

On June 16, 2017, about a month after the hearing, the trial court set a case management conference for September 2017 for CCSD to file an order and judgment. CCSD submitted an order to the court on June 20, and on June 27, 2017, an order was

¹ Because this matter comes before us on a demurrer, we accept Abernathy's factual allegations as true. On appeal, CCSD asserts that it administers the Association's checking account at the Association's request, and that CCSD's role is limited to confirming that requested checks have been approved by the Association's board and issuing checks to the requesting officer. According to CCSD, the dispute here arose from Abernathy's belief that he could spend the Association's funds without obtaining the approval of the Association's board.

signed and filed sustaining the demurrer without leave to amend. The order states that Abernathy appeared at the demurrer hearing, that he had not filed any papers opposing the demurrer, and that the court's tentative ruling was not contested.

Judgment in the case was not entered until more than a year later, apparently because of delay on the part of CCSD. A few days after the entry of the June 27, 2017 order, CCSD filed an ex parte application for judgment, with an appearance scheduled for July 3, 2017.² About a month later, CCSD filed another ex parte application for judgment, with an appearance scheduled for August 10, 2017. The register of actions does not reflect any court activity on either of the scheduled dates.

On October 23, 2017, the trial court issued an order to show cause for failure to file judgment, set for December 19. Abernathy appeared on December 19, but CCSD did not. Sanctions were ordered against Hadiaris, CCSD's counsel, and the order to show cause was continued to March 20, 2018. Again, Abernathy appeared but CCSD did not. Again, sanctions were ordered against Hadiaris and the order to show cause was continued, this time to May 22, 2018. Eventually, the sanctions were paid, and the order to show cause was continued yet again; finally. On July 6, 2018, judgment was entered.

DISCUSSION

In his opening brief on appeal, Abernathy offers the following argument, which we reproduce verbatim ("JFK TA" is the Association): "CCSD did not serve me neither by phone call nor a verbal notice for motion with demurer conference. [¶] Neither the Court nor I have been informed or know about Demurrer. CCSD side **have** no prove of delivery. The information of the Demurer conference has never reached my knowledge. [¶] The ownership of JFK TA bank by CCSD account was fraudulently obtained."

² The ex parte application was supported by a declaration from CCSD's counsel stating that he had called Abernathy on the telephone and advised him of the date, time, place and purpose of the application. In his brief on appeal, Abernathy claims that the declaration was false.

A. *Applicable Law*

“ ‘A fundamental principle of appellate practice is that an appellant “ ‘must affirmatively show error by an adequate record. . . . Error is never presumed.’ ” ’ ” (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 639.) An appellant has the burden “to support claims of error with meaningful argument and citation to authority.” (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52.) “We are not required to examine undeveloped claims or to supply arguments for the litigants.” (*Ibid.*) “Pro. per. litigants are held to the same standards as attorneys.” (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) A self-represented litigant is “treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.” (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) This means that although Abernathy is representing himself, he must present argument supported by citations to the record and applicable legal authority.

When we review a judgment dismissing a complaint after the granting of a demurrer without leave to amend, we assume the truth of the properly pleaded factual allegations and review the complaint independently to determine whether it states facts sufficient to state a cause of action. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 (*Schifando*)). Although our review of a demurrer is de novo, “it is limited to issues which have been adequately raised and supported in [Appellant’s] brief.” (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 [discussing de novo review of summary judgment].)

When a demurrer is granted without leave to amend, “we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment.” (*Schifando, supra*, 31 Cal.4th at p. 1081.) It is the plaintiff’s burden to “demonstrate the manner in which the complaint might be amended.” (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.) The demonstration “need not be made in the trial court so long as it is made to the reviewing court.” (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1386.)

B. *Analysis*

Abernathy has not included his complaint in the record, and therefore we cannot review it as we ordinarily would in an appeal from a demurrer. But even if Abernathy had included his complaint, we could not conclude that the trial court had erred because Abernathy offers no argument that his complaint stated a cause of action. The sole statement on that point in Abernathy's brief is his unsupported assertion that CCSD "fraudulently obtained" ownership of the Association's bank account. This is not appellate argument and could not justify a reversal. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655 (*Keyes*) ["The fact that we examine the complaint de novo does not mean that plaintiffs need only tender the complaint and hope we can discern a cause of action. It is plaintiffs' burden to show either that the demurrer was sustained erroneously or that the trial court's denial of leave to amend was an abuse of discretion"].) Furthermore, Abernathy offers no rebuttal to CCSD's argument, made in the trial court and on appeal, that he lacks standing to bring his claim.

Having concluded that Abernathy has not shown error in the sustaining of CCSD's demurrer, we turn to the question whether the trial court properly denied leave to amend. As far as the record shows, Abernathy made no showing as to possible amendment in the trial court, and he makes no showing or argument on the issue on appeal. Accordingly, he has not shown that the trial court erred by denying him leave to amend. (*Keyes, supra*, 189 Cal.App.4th at p. 655.)

Abernathy's brief states that Abernathy was not given notice of the "demurrer conference" and the demurrer, but this claim is not supported by the record. Abernathy does not challenge the declaration from Hadiaris regarding the meet-and-confer efforts Hadiaris made before he filed the demurrer. The trial court order states that Abernathy was present at the demurrer hearing. To the extent Abernathy claims he had no notice of the ex parte appearances scheduled for July and August 2017, Abernathy shows no error because nothing in the record or in his brief suggests that the ex parte appearances occurred or that the court took any action in response to the ex parte applications. Abernathy admits that he had notice of the order to show cause that was later issued by

the trial court, and that he attended the scheduled hearings even though CCSD did not. In these circumstances, we cannot conclude that Abernathy was in any way deprived of notice.

In sum, Abernathy has not shown error by the trial court in sustaining CCSD's demurrer without leave to amend and subsequently entering judgment.

DISPOSITION

The judgment is affirmed. Respondent is entitled to its costs on appeal.

Miller, J.

We concur:

Richman, Acting P. J.

Stewart, J.

A154710, *Abernathy v. Citywide Council Senior Disabled*